IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1235 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANDLA PORT TRUST - Appellant(s)
Versus
BHAWANISHANKER A JOSHI - Defendant(s)

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Appearance :
(MR Rajpunia) for Appellant(s) : 1,MRS DAXA N MEHTA for Appellant(s) : 1,
MR SANJAY M AMIN for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has filed an application to recover the amount of compensation

for the injury received by him during the course of his employment with the opponent. The W.C. Case No. 3 of 1982 was decided by the Commissioner, for Workmen's Compensation , Bhuj, who ordered the opponent to pay a sum of Rs 37,800/- as lumpsum compensation, and to pay a further sum of Rs 18,900/- penalty at the rate of 50% under section 4 (a) of the Workmen's Compensation Act and interest at the rate of 6% P.A from the date of the application till realisation.

2. That the applicant is a Workman employed by the opponent and he sustained personal injury by accident arising out of and in the course of his employment. The injury was received by him while he was on duty on 6th April, 1980. The wire rope of the crane No.13, which was engaged in unloading cement on the wharf at New Kandla Port, shapped, at about 19/10 hours, alongwith a steel tray full of cement bags, fell upon and crushed the applicant. As a result of this the applicant sustained injury namely amputation of left leg below thigh and injury in the right leg and hence the present

application has been filed to recover compensation.

3. Learned counsel has contended that the Commissioner had not issued any notice calling upon the appellant to produce evidence and/ or fixing a date for the same and/or fixing a date for disposal of the application. The first notice received by the appellant was not a notice as envisaged under rule 26 of the Gujarat Workmen Compensation Rules, 1967. As no notice under rule 26 was issued to the appellant, the proceedings before the Commissioner were absolutely illegal, violative of the principles of natural justice and null and void and consequently the judgment and award of the Commissioner are also illegal and void.

4. Learned counsel has contended that the Commissioner ought to have issued a notice fixing a date of hearing and for leading evidence and that in the absence or such a notice he had no jurisdiction to proceed with the matter. The Commissioner had acted illegally and erroneous in

deciding the application ex-parte.

5. From the record it seems that the appellant has not examined the original claimant nor has examined any witnesses. In that view of the matter the authority was justified in awarding compensation under the Workman Compensation Act. The appellant being statutory authority ought to have been vigilant at the relevant time therefore the matter is of the year 1982 and it will not be appropriate to remand the matter back. In that view of the matter, I do not find any merits in the appeal and therefore the same is required to be dismissed. In the result, the appeal is dismissed. No order as to costs.

(K.S.Jhaveri,J)

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